sufficient grounds to induce the court to stay the distribution of the fund pending the appeal. See also *Barker* v *Lavery*[6] followed in *Atkins* v *Great Western Railway Co.*[7] In the present case, the defendant set out in his affidavit a number of grounds of appeal which he contended had substantial merits. However, the fact that there may be strong grounds for an appeal is not by itself a reason for granting a stay. In *Atkins* v *Great Western Railway Co,*[7] Lord Esher MR said in refusing a stay:

> ... that there were strong grounds for an appeal was no reason, for no one ought to appeal without strong grounds for doing so.

For the above reasons, the application for a stay was dismissed with costs.

Application dismissed.

Solicitors: *Lee & Lee; JB Jeyaretnam & Co.*

Reported by *Terence Tan Bian Chye*

Kintyre Park Development Pte Ltd v Cooma Lau & Loh

HIGH COURT (SINGAPORE) — PETITION OF COURSE NO 1 OF 1990
CHAN SEK KEONG J
3 AUGUST 1990

Legal Profession — Bill of costs — Taxation — Mortgagee's solicitor and client costs — Payment under protest by one borrower before taxation — Whether taxation allowed — Whether borrower liable for full amount — Legal Profession Act (Cap 161, 1985 Ed), ss 117(1) & 119

Words and Phrases — 'Bill' — Legal Profession Act (Cap 161, 1985 Ed), s 117(1)

The petitioner, as one of the two owners of a property mortgaged to the mortgagee bank, paid to the respondent as the mortgagee's solicitors, all the legal costs and expenses of an action by the mortgagee against the petitioner to recover outstanding sums under the mortgages and the costs of a winding-up acion. Payment was made 'strictly without admission of liability and on a without prejudice basis and paid under protest' with a provision for taxation of the respondent's bill of costs.

The petitioner filed a petition to tax the respondent's bill pursuant to s 117(1) of the Legal Profession Act (Cap 161, 1985 Ed) and to recover any sums paid in excess of taxed costs. The respondent objected to the petition on two grounds, that GB, the other owner of two-thirds share of the property, was not a party to the proceedings, and that the bill may not be taxed as it had been paid and there were no special circumstances shown by the petitioner as required under the Act.

Held, granting the petition:

(1) The question before the court was who was liable to pay the bill of the party chargeable therewith. The party chargeable was the mortgagee, the respondent's client. The petitioner was jointly liable with GB and each of them severally liable for the mortgagee's bill. The petitioner, being joint debtor, was liable for the whole of the bill and not merely one-third.

(2) There was no inflexible rule of law that all parties chargeable under a bill of costs must be made parties to a taxation.

(3) The payment by the petitioner was not made with a view to settling it finally but with a view to effecting prompt redemption of the petitioner's property. The payment was therefore not a payment for the purpose of s 119(1) of the Act and the petitioner therefore need not show any special circumstance required under the Act before taxation was permitted by the court. Alternatively, the petitioner's express reservation to tax is per se a special circumstance within s 119(1) of the Act.

[*Editorial Note:* The respondent has appealed to the Court of Appeal vide Civil Appeal No 74 of 1990.]

Cases referred to

1 *Re Perkins* 50 ER 95 (distd)
2 *Re Lewin* 51 ER 915 (distd)
3 *Re Ilderton* 55 ER 344 (distd)
4 *Re Stephen* 41 ER 1060 (folld)
5 *Re Williams* (1891) 65 LT 68 (folld)
6 *Re Leggatt & Carruthers* (1908) 53 Sol J 84 (folld)
7 *Sanders* v *Isaacs* [1971] 1 All ER 755 (refd)
8 *Re Baker* (1863) 32 Beav 526; 55 ER 207 (folld)

Legislation referred to

Legal Profession Act (Cap 161, 1985 Ed) s 117(1)

Laurence John Wee Ewe Lay for the petitioner.
David Hew Sin Teck for the respondent.

Cur Adv Vult

Chan Sek Keong J: The petitioner and another company, viz Golden Bow Holdings (Pte) Ltd ('Golden Bow'), were proprietors as tenants in common holding respectively a one-third share and a two-third share in a property which was mortgaged and further mortgaged to the respondent's clients, viz Societe Generale Pour Favoriser Le Developpment Du Commerce Et De L'Industrie En France ('the bank'), a French bank carrying on business in Singapore, to secure banking facilities to each or both of them up to the limit of $24,625,000 plus $3,375,000. By the terms of the said mortgages, the petitioner and Golden Bow are jointly (or jointly and severally) liable to repay any outstandings to the bank and also the costs of enforcing the securities.

The mortgagee bank commenced winding-up proceedings against the petitioner and Golden Bow in connection with outstandings under the said mortgages. It was not a complicated matter as the main issue was the validity of the statutory notice of demand on which the winding-up petition was founded. The respondent, a firm of advocates and solicitors, acted for the bank in the said proceedings and, in connection therewith,

engaged the services of a Queen's Counsel on behalf of the bank. The proceedings were settled out of court and the petitioner redeemed the said mortgages on or about 7 April 1989 when the petitioner paid to the bank (i) the sum of $181,883.40 claimed by the bank for legal fees and expenses up to and including the date of redemption payable to its own solicitors, the respondent and (ii) the sum of £16,350 being the fees paid by the bank to Queen's Counsel and (iii) the sums of £3,340 and £3,795.40 being the expenses of the said Queen's Counsel.

It is not disputed (a) that the respondent had delivered to the bank for payment a bill of costs No 990 dated 5 April 1989 and (b) that the respondent received a cheque in payment of the said bill from the petitioner's solicitors on 7 July 1989 'strictly without admission of liability and on a without prejudice basis and paid under protest'. The petitioner's solicitors also stated in their covering letter of 7 July 1989 that 'our clients do further hereby put your clients on notice that they would require any moneys paid towards legal costs and related expenses to be substantiated and justified by taxation before the courts'. It is also not disputed by counsel for the respondent that the payment of the bank's costs was a requisite of the redemption and that the bank accepted the payment of the said amounts described above on the terms reserved by the petitioner's solicitors.

The petitioner filed this petition of course (1) to tax the respondent's costs pursuant to s 117(1) of the Legal Profession Act (Cap 161, 1985 Ed) on 5 April 1990; (2) to recover any sum paid in excess of taxed costs and (3) costs. It is common ground that this petition has been filed not after one year from the date of the respondent's bill of costs.

The respondent has objected to the right of the petitioner to present this petition on the following grounds: (i) that the petition is bad as Golden Bow had not been joined as a petitioner or a defendant and (ii) that since the petitioner has paid the bill, the bill may not be taxed except where there are special circumstances and there are none.

In support of his first ground, counsel relies on s 117(1) which provides as follows:

> An order for the taxation of a bill of costs delivered by any solicitor may be obtained on a petition of course by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at any time within one year from the delivery of the bill, or, by the solicitor, after the expiry of one calendar month and within one year from the delivery of the bill.

It is to be noted that s 117(1) refers to the right of *any person liable* to pay the bill to apply for an order for taxation. However, counsel for the respondent has submitted that the petitioner is not such a person as: (a) the words 'any person liable to pay the bill' mean, where there is more than one person, 'all the persons liable to pay the bill', and they are the petitioner and Golden Bow and not the petitioner alone; (b) the word 'bill' means the whole bill only and does not include part of the bill, and the petitioner is liable to pay only part (ie one-third) of the bill and not the whole bill. It must therefore follow that the petition is bad as Golden Bow has not been joined as a petitioner in this petition and the petitioner is not liable for the whole bill.

Counsel has also advanced one further submission which is relevant to the first ground. It is that Golden Bow has lost its right to tax the bill because (a) by not joining in as a petitioner, it must be deemed to have agreed to the bill and therefore may not have it taxed, and/or (b) in failing to file a petition of course or to join in this petition within one year from the date of its delivery, it has lost its right to tax by virtue of s 119 (which I shall consider in relation to a separate issue). That being the case, it is then contended that the petition has to be dismissed and cannot be amended either to include Golden Bow as a petitioner in case it consents to do so, or to be brought in as a defendant in case it refuses to join in the proceedings.

Counsel for the respondent has referred to the following authorities as having decided the necessity of joinder: *Re Perkins*,[1] *Re Lewin*,[2] *Re Ilderton*. These decisions laid down the general rule that the courts would not order taxation unless all the persons chargeable were made parties to the petition. In my view, they do not support the proposition that it is an inflexible rule of law that all parties chargeable must be made parties. The rationale of these decisions is simply that if all the persons liable were not present to be bound by the order of court, there would be a multiplicity of such proceedings as the absent party would be entitled to tax the bill all over again. This rationale was emphasized by the Master of the Rolls, Sir John Romilly, in *Re Ilderton*.[3] This was a rule of convenience. In *Re Lewin*,[2] the same Master of the Rolls also said that the court would direct taxation on the application of one party if the other, by reason of his absence abroad, would not concur or if he refused to concur.

If counsel's contention that Golden Bow has lost its right of taxation, then it undermines his other argument that Golden Bow must be made a party. No purpose is served by making Golden Bow a party in such circumstances. The court is being asked to apply a rule of convenience when no inconvenience can result if the rule were not applied: in other words, without regard to the object of the rule. I am not disposed to doing it. In my view, these decisions do not assist the respondent in their objection.

The question before the court is who is *liable* to pay the bill to the party chargeable therewith. The party chargeable by the respondent is their own client, viz the bank. As the petitioner is jointly liable with Golden Bow and each of them is severally liable to the bank for the bank's costs, it must follow that the petitioner is 'any person liable to pay the bill'. This is elementary, whether the liability is considered solely as a joint liability or also as a joint and several liability. As between the creditor and two or more joint debtors, each debtor is liable to the full extent of the debt. The circumstance that Golden Bow is also liable to pay the bill does not render the petitioner any the less liable to pay the bank. As counsel for the petitioner has put it succinctly, s 117(1) does not use the words 'the person liable' or 'all the persons liable'.

In relation to this point, there is in fact decided authority against the respondent's case. In *Re Stephen*,[4] a decision which was not specifically drawn to the attention of the court although it was referred to in *Re Lewin*,[2] a member of an acting committee of a project company had retained solicitors who had been paid £28,000 for legal costs upon their dismissal. Mr Bass, a member of the said committee, presented a petition under the Solicitors Act 1843 in his own name to tax the solicitors' costs and it was objected that he was not in a position to entitle him to ask for taxation of the bills. The Lord Chancellor dealt with the question as follows:

> The 37th section of the 6&7 Vict c 73, gives to the Lord Chancellor and Master of the Rolls, in cases in which no part of the business shall have been transacted in any court of law or equity, power to refer for taxation any bill delivered upon the application of the party chargeable, and authorizes such courts and judges, in the same cases in which they are authorized to refer a bill delivered, to make such order for the delivery of a bill, and the delivery up of papers, &c, and in such manner as had theretofore been done where the business had been transacted in the court in which the order was made; and the 41st section provides that payment shall be no bar, under special circumstances, of an order for taxation [if the application is made within a year thereof]. The 38th section provides that a party not chargeable, but liable to pay, or who shall have paid to the solicitor, or to the party chargeable, shall be entitled to the same reference for taxation; and the 43d section directs that all applications under that Act shall be in the matter of such attorney or solicitor.
>
> Mr Bass was a member of the acting committee from August 1845, the governing body under whose authority and direction the employment of the solicitors had taken place, and who were liable to them, or, in the terms of the Act, 'chargeable', besides which he had, before the actual payment, become entitled to certain shares by contract with Lee, under which all rights and liabilities incident to such shares became vested in him; he was, therefore, a party liable to pay, or whose money had paid the solicitors' demand. It appears to me, therefore, that Mr Bass was a party entitled to an order for taxing the solicitors' demand, and so Vice-Chancellor Knight Bruce must have thought, because the petition was not dismissed, which it ought to have been if the court had been of opinion that the petitioner had no title to make the application. I have indeed to regret that I have not had the benefit of any note of the Vice-Chancellor's judgment, but I must assume that the ordering the petition to stand over must have been founded upon an opinion that no decisive objection had been raised to the order prayed.

The respondent's submission on the meaning of the word 'bill' also fails for the reasons I have given above. The petitioner, being a joint debtor, is liable for the whole of the bill and not merely one-third of the bill. The word 'bill' in s 117(1) means the bill of costs which the petitioner is liable to pay and in respect of which he is entitled to have taxed. In contending that the petitioner is only liable for one-third of the bill, counsel for the respondent is in effect stating that the liability of the petitioner for the costs is several. This submission is plainly wrong having regard to the liability of the petitioner under the terms of the mortgages. It overlooks the fundamental difference between joint liability and several liability and also the distinction between the petitioner's contractual liability to the respondent for the latter's costs and the petitioner's and Golden Bow's liability, inter se, for such costs. I was surprised that counsel for the respondent persisted in his line of argument after these basic points were drawn to his attention.

With reference to the second ground of objection, s 119 provides as follows:

> (1) After the expiration of one year from the delivery of a bill of costs, or after payment of the bill, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the solicitor and under special circumstances to be proved to the satisfaction of the court.
>
> (2) No such order for taxation shall in any event be made after the expiry of one year from the payment of the bill of costs.

Counsel for the respondent has not addressed the court on the meaning of the expression 'special circumstances' in s 119. He merely submits that the petition of course does not contain any matters which can amount to special circumstances. Counsel himself has sworn an affidavit exhibiting various documents which show that the petitioner paid the respondent's 'note of charges' on 7 April 1989 under a reservation to have it taxed in due course. The words used by the solicitors for the petitioner (and also for Golden Bow as they were acting for Golden Bow in the redemption as well) were as follows:

> The said redemption and all moneys paid as a consequence thereof including costs and expenses is on the premises and basis contained and set out in our letters to you dated 13 January 1989 and 14 January 1989, and is strictly without admission of liability and on a without prejudice basis and paid under protest.

Without prejudice to the generality of the aforesaid, in respect of the moneys claimed in the fifth paragraph, items (2) and (3) of your letter dated 6 April 1989 towards costs and expenses, our clients are paying the same on a similar basis as stated in the second paragraph above and our clients do further hereby put your clients on notice that they would require any moneys paid towards legal costs and related expenses to be substantiated and justified by taxation before the courts.

The respondent has accepted payment on these terms. Two points arise from this. The first is that a payment by a person without admission of the amount for which he is liable is not, in my view, a payment for the purpose of s 119(1) of Cap 161. The whole object of s 119(1) is to prevent the person chargeable or liable to pay the bill and who has paid it unconditionally from claiming that it is excessive unless he can show special circumstances. The payment of the respondent's bill was not made with a view to settling it finally (as the exact amount could only be determined on taxation) but with a view effecting prompt redemption of the petitioner's property. On this ground, the petitioner need not show any special circumstances.

If my decision on the first point is wrong, then the second point that arises is that the petitioner's express reservation to tax the bill is per se special circumstances: see *Re Williams*[5] and *Re Leggatt & Carruthers.*[6] I prefer this line of authorities to another line which are or appear to the contrary: see Goff J in *Sanders* v *Isaacs*[7] at p 760. Accordingly, I hold that the respondent's second ground also has no merit.

After I reserved judgment on this matter, counsel for the respondent drew my attention to the case of *Re Baker*[8] where the mortgagor petitioned for taxation of the bill of costs of the mortgagee's solicitor after payment. Counsel highlighted the following sentence in the copy of the report submitted to the court: 'When a mortgagor seeks to have the bill of costs of the mortgagee's solicitor taxed, it is usual to have the mortgagee present as well as the solicitor'. I presume counsel's submission is that the petition before me is irregular in that the bank was not present at the hearing before me. What counsel has not highlighted is another sentence in the same judgment which read: 'Here, if the mortgagee can tax the bill, it is not necessary to have him here, if the case is put on that alone: but, if not, you must serve him'. The question that immediately arises is whether the bank may at the present time tax the bill of costs against the respondent as their solicitors? There is no argument that the bank may not. Although the respondent has delivered a bill of costs to the bank for payment the bank did not pay the bill. If the bank had paid the bill without querying its fairness, then the petitioner as a mortgagor would have been entitled to tax the bill against the bank as a mortgagee: see *Re Baker.*[8]

But, supposing I am wrong in the above conclusion, the irregularity, if any, can easily be remedied by serving a copy of the petition on the bank. In the circumstances of this case, no purpose would be served by making the bank appear in this petition. What is the bank to say? For the above reasons, I make an order in terms of the petition.

Petition allowed

Solicitors: *Wee Ramayah & Partners; Cooma Lau & Loh.*

Reported by *Seah Min Wai*